

BACKGROUND

Plaintiffs bring a number of claims challenging the Bureau of Alcohol, Tobacco, Firearms and Explosives' latest rulemaking, "Definition of 'Engaged in the Business' as a Dealer in Firearms." 89 Fed. Reg. 28968. Because Defendants set an abbreviated effective date, contrary to past practice, the Parties agreed to an expedited briefing schedule so that this Court may hear Plaintiffs' plea for relief before the Rule imperils the rights of law-abiding gun owners. Under this schedule, Defendants' deadline to file a response to Plaintiffs' Motion for Temporary Restraining Order and/or Preliminary Injunction is 5:00 P.M. CDT on May 14, 2024. Plaintiffs then have 24 hours to submit a reply in support of their motion. This is to ensure that both the Parties and this Court have time to process all the briefing in preparation for a May 16 hearing on Plaintiffs' motion.

On May 14, less than two days before the hearing, and one day before Plaintiff's reply is due, Amici submitted to this Court a joint motion for leave to file a brief as amicus curiae. In ordinary circumstances, Plaintiffs would consent to the motion. However, in this instance, Plaintiffs believe that Amici's filing is untimely and prejudicial given the tapered briefing schedule and the imminency of the May 16 hearing. Plaintiffs informed Amici of this during the conferral process, explaining Plaintiffs could not consent because Plaintiffs would not have adequate time to respond to Amici's arguments before the hearing. Amici sought leave from the Court anyway. Plaintiffs now submit this opposition and ask the Court deny to deny the request for leave to file as amicus curiae.

STANDARD

"No federal rule exists governing the procedural or substantive requirements for district court amicus curiae briefs." *Evanston Ins. Co. v. Rodriguez Eng'g Lab'ys*, No. 1:21-CV-01129-

RP, 2023 WL 379277, at *1 (W.D. Tex. Jan. 20, 2023). “Likewise, the Local Rules of the United States District Court for the Western District of Texas do not address the issue.” *Id.* Thus, district courts have “broad discretion” when deciding whether to permit amicus curiae briefs. *Id.* (citing *In re Halo Wireless, Inc.*, 684 F.3d 581, 595-96 (5th Cir. 2012)).

In exercising this discretion, district courts should consider whether the information offered through the amicus brief is “timely and useful” or otherwise “necessary to the administration of justice.” *Id.* (citations omitted); *see also Texas v. United States*, No. 6:21-cv-00003, 2021 WL 2172837, at *1 (S.D. Tex. Mar. 5, 2021) (stating that “[f]actors relevant to the determination of whether amicus briefing should be allowed include whether the proffered information is ‘*timely and useful*’ or otherwise *necessary to the administration of justice*” (emphasis in original) (citations omitted)).

ARGUMENT

Accepting the amici brief, submitted so late in the briefing schedule, would be neither timely nor useful but would be unfair to Plaintiffs. The Court should exercise its discretion by striking the brief.

Under any imaginable standard, the amici’s filing is tardy and unfair to Plaintiffs. May 14th is less than two days before the Court will conduct its scheduled hearing to consider Plaintiffs’ TRO/ PI motion. As a result of the amici’s hasty filing, none of the parties have had an opportunity to consider the amici brief in time to either address its arguments in their briefing or in their oral presentations. To the extent the brief develops new legal theories in opposition to an injunction, the Court would deprive Plaintiffs of an opportunity to refute them, by accepting the brief. *See Fed. R. App. P. 29(e) Adv. Comm. Notes to 1998 Amend.* (commenting that the FRAP’s deadline

allows opponents sufficient time to review arguments made by an amicus and “address them in the party’s responsive pleading”).

Moreover, there is no extraordinary reason for the Court to receive the amici’s brief despite its late submission. *See Halo Wireless*, 684 F.3d at 595-96 (a court should accept an untimely amicus only when justified by “the value of the potential amicus brief”) (citing *Fry v. Exelon Corp. Cash Balance Pension Plan*, 576 F.3d 723, 725 (7th Cir. 2009)). “[A]cceptance of an ... amicus curiae should be allowed only sparingly, unless the amicus has a special interest.” *Evanston*, No. 1:21-CV-01129-RP, 2023 WL 379277 at *1 (W.D. Tex. Jan. 20, 2023) (citation omitted). The amici do not approach the Court with a “special interest.” Rather, amici present themselves as advocates for sound public policy. Defendants likewise purports to have pursued public welfare by promulgating its new rule, and therefore the amici have not approached the Court with a unique interest. *See Club*, 2007 WL 3472851 at *3 (amicus excluded in part because it “has the same interests and policy objectives” as a party). The amici’s brief will add nothing invaluable to this Court’s consideration of the case that might excuse its tardiness.

The filing of an amicus brief ought to be timely. The amici’s filing is untimely and their motion for leave should be denied on that basis.

CONCLUSION

For these reasons, Defendants request that this Court deny the amici’s Motion for Leave to file Amicus Brief.

Date: May 15, 2024

Respectfully submitted.

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on May 15, 2024 and that all parties will be served with the Original Complaint via certified mail and process server.

/s/Garrett Greene
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